

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:)	
Krisp-Pak Company, Inc.)	
835 Southampton Avenue)	EPA Docket No. EPCRA-03-2009-
Norfolk, Virginia 23510,)	0111
)	
Respondent,)	
)	
)	
Krisp-Pak Company, Inc.)	Proceedings Pursuant to Sections 312
835 Southampton Avenue)	and 325 of the Emergency Planning
Norfolk, Virginia 23510,)	and Community Right-to-Know Act,
)	42 U.S.C. §§ 11022 and 11045.
Facility.)	

CONSENT AGREEMENT AND FINAL ORDER

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, ("Consolidated Rules of Practice"), in Section 22.18(b)(2). The Administrator has delegated the authority given to her under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has redelegated those authorities to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The Respondent, Krisp-Pak Company, Inc. ("Respondent" or "Krisp-Pak"), by its attorney or other authorized representative, and EPA stipulate as follows:

1. EPA issued an Administrative Complaint ("Complaint") against Respondent, docketed at No. EPCRA-03-2009-0111, on March 17, 2009.
2. Respondent Krisp-Pak operates a vegetable-processing facility located at 835 Southampton Avenue, Norfolk, Virginia 23510, (the "Facility"), with SIC Codes of 5148 (fresh fruits and vegetables merchants wholesalers) and 2099 (food preparations, not elsewhere classified), and NAICS Codes of 424480 (fresh fruits and vegetables merchants wholesalers) and 311991 (perishable prepared food manufacturing).

3. The Complaint alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the State Emergency Response Commission ("SERC"), and the local fire department, an Emergency and Hazardous Chemical Form identifying and providing the required information concerning the ammonia, an extremely hazardous substance ("EHS"), present at the Facility above the threshold storage quantity for calendar years 2005, 2006 and 2007.

4. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations of the Complaint.

5. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint, but expressly waives any of its rights to contest said allegations.

6. For the purpose of this proceeding, Respondent expressly waives its rights to a hearing and to appeal this CA and accompanying Final Order (collectively, the "CA/FO") under 40 C.F.R. §§ 22.30 and 22.39 and Section 325 of EPCRA, 42 U.S.C. § 11045.

7. EPA incorporates by reference the factual allegations contained in the Complaint as Findings of Fact for this CA.

8. Based upon the Findings of Fact, EPA concludes that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the SERC and the local fire department, an Emergency and Hazardous Chemical Form identifying and providing the required information concerning the ammonia present at the Facility above the threshold storage quantity for calendar years 2005, 2006 and 2007.

9. As a result of EPA's conclusion that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, EPA has determined that Respondent is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*.

10. Based on the foregoing Stipulations and Findings, the parties, by their attorneys or authorized officials, hereby agree to the following.

Settlement

11. On or about May 12, 2009, May 27, 2009, June 2, 2009, June 3, 2009 and June 9,

2009, Respondent provided information to EPA to support a claim that it is unable to pay a penalty.

12. On or about June 22, 2009, EPA conducted an ability-to-pay analysis of Respondent and determined that Respondent is unable to pay the full penalty proposed in the Complaint.

13. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$5,000.00.

14. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

Payment Terms

15. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.

Payment of the EPCRA penalty shall be made by sending a cashier's check in the amount of \$5,000.00 made payable to the "United States Treasury." If the payment of the EPCRA penalty is sent via regular or U.S. Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Natalie Pearson (314-418-4087)

If the payment of the EPCRA penalty is sent via FedEx or other non-US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson, (314-418-4087)

Payment by wire transfer/EFT should be sent to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Payment via Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074
Contact for ACH: Jessie White 301 887-6548

16. The Respondent shall note on the penalty payment checks the title and docket numbers of this case. The Respondent shall submit copies of the checks to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III and
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

17. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States, as well as a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

18. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

19. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

20. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

21. Failure by the Respondent to pay the \$5,000.00 penalty assessed by the FO in full by the final due date, or to pay any stipulated penalties assessed under this CA/FO, may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

General Provisions

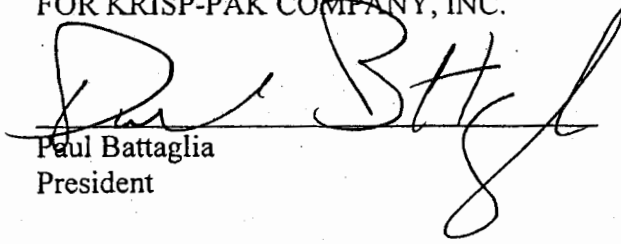
22. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

23. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 312 of EPCRA, 42 U.S.C. § 11004, or any regulations promulgated thereunder.

24. This CA/FO resolves only those civil claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, Complainant reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

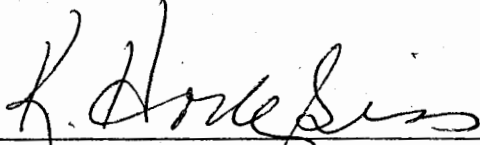
25. Each party to this action shall bear its own costs and attorney's fees.

FOR KRISP-PAK COMPANY, INC.

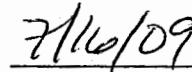

Paul Battaglia
President

7/8/09
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

A handwritten signature in dark ink, appearing to read 'K. Hodgkiss', written over a horizontal line.

Kathryn Hodgkiss, Acting Director
Hazardous Site Cleanup Division

A handwritten date '7/16/09' in dark ink, written over a horizontal line.

DATE

